

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDGAR NOE MENDEZ,

Petitioner,

v.

WILLIAM SULLIVAN, Acting Warden,

Respondent.

Case No. CV 18-5443 JFW (PVC)

**ORDER ACCEPTING FINDINGS,
CONCLUSIONS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Petition, all the records and files herein, the Amended Report and Recommendation of the United States Magistrate Judge, and Petitioner's objections. After having made a *de novo* determination of the portions of the Amended Report and Recommendation to which objections were directed, the Court concurs with and accepts the findings and conclusions of the Magistrate Judge.

In his objections, Petitioner asserts that he "know[s] [he] must get on his case" and begin the exhaustion process for which he was granted a stay on May 1, 2019. However, he states that he is unable to do so because he understands "very little English," law library access has been curtailed in light of the COVID-19 pandemic, he does not understand the law, and has been unable to find a "jailhouse lawyer" to help him. (Obj. at

1 1-2). He also claims that his “cognitive capacity” is too limited “to effectively litigate,”
2 and requests appointment of counsel. (*Id.* at 2).

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4 With respect to Petitioner’s request for appointment of counsel, “there is no general
5 constitutional right to counsel . . . in collateral postconviction review proceedings.”
6 *Graves v. McEwen*, 731 F.3d 876, 878 (9th Cir. 2013). However, courts may appoint
7 counsel for state habeas petitioners who are or become unable to afford counsel “when the
8 interests of justice so require.” 28 U.S.C. § 2254(h); 18 U.S.C. § 3006A. Appointment of
9 counsel is required in at least two situations: (1) when the court determines that counsel is
10 “necessary for effective utilization of discovery procedures” and (2) when the court
11 determines that “an evidentiary hearing is required.” *Weygandt v. Look*, 718 F.2d 952,
12 954 (9th Cir. 1983).

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14 The record before the Court does not provide any basis for concluding that
15 Petitioner cannot adequately present his claims to the Court. Neither discovery nor an
16 evidentiary hearing appears to be required in this case and “the interests of justice” do not
17 demand the appointment of counsel. The Court notes that Petitioner filed an amended
18 petition *sua sponte* and successfully moved for a stay. Petitioner appears thus far to
19 understand the issues and to be capable of representing himself adequately in this
20 proceeding. *See LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987) (denial of request to
21 appoint habeas counsel appropriate where district court pleadings showed that petitioner
22 understood the issues and was able to present his contentions). Accordingly, the request
23 for appointment of counsel is denied.

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25 The excuses in the objections for Petitioner’s failure to even begin the exhaustion
26 process more than fourteen months after the stay was granted are unavailing. The “many
27 obstacles” that Petitioner claims have prevented him from litigating his case are shared by
28 virtually every prisoner, and are too general in nature. (Obj. at 1). Petitioner has

1 demonstrated that he will not exhaust his claims, despite Court orders that he do so, and
2 has refused to voluntarily dismiss his unexhausted claims. In light of this impasse, which
3 is entirely of Petitioner's own making, the objections are overruled.

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5 IT IS ORDERED that the First Amended Petition is denied and Judgment shall be
6 entered dismissing this action without prejudice.

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8 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and the
9 Judgment herein on Petitioner at his address of record and on counsel for Respondent.

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LET JUDGMENT BE ENTERED ACCORDINGLY.

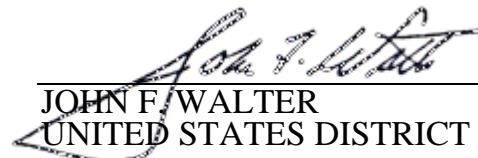
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DATED: July 13, 2020

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JOHN F. WALTER
UNITED STATES DISTRICT JUDGE

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